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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to
Revoke Probation Against:

LAMONT OTIS IVERY
7646 Sandpiper Court
Rancho Cucamonga, California 91730

Respiratory Care Practitioner License No. 22791

Respondent.

Case No. R-1974

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
above-entitled proceedings that the following matters are true:

PARTIES

1. Stephanie Nunez (Complainant) is the Executive Officer of the Respiratory
Care Board of California (Board). She brought this action solely in her official capacity and is
represented in this matter by Bill Lockyer, Attorney General of the State of California, by Elaine
Gyurko, Senior Legal Analyst.

2. Lamont Otis Ivery (Respondent) is representing himself in this proceeding
and has chosen not to exercise his right to be represented by counsel.

3. On or about January 30, 2003, the Board issued to Respondent Respiratory
Care Practitioner License No. 22791 which was on probation for three years. This license will

1 expire on January 31, 2006, unless renewed.

2 JURISDICTION

3 4. Accusation and Petition to Revoke Probation No. R-1974 was filed before
4 the Board, and is currently pending against Respondent. The Accusation and Petition to Revoke
5 Probation, together with all other statutorily required documents, was properly served on
6 Respondent on May 6, 2005. Respondent filed his Notice of Defense contesting the Accusation
7 and Petition to Revoke Probation. A copy of Accusation and Petition to Revoke Probation No.
8 R-1974 is attached as Exhibit 1, and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read and understands the charges and allegations
11 in Accusation and Petition to Revoke Probation No. R-1974. Respondent has also carefully read
12 and understands the effects of this Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the
14 right to a hearing on the charges and allegations in the Accusation and Petition to Revoke
15 Probation; the right to be represented by counsel at his own expense; the right to confront and
16 cross-examine the witnesses against him; the right to present evidence and to testify on his own
17 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
18 production of documents; the right to reconsideration and court review of an adverse decision;
19 and all other rights accorded by the California Administrative Procedure Act and other applicable
20 laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
22 each and every right set forth above.

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in
25 Accusation and Petition to Revoke Probation No. R-1974.

26 9. Respondent agrees that his Respiratory Care Practitioner License is subject
27 to discipline, and he agrees to be bound by the Board's imposition of discipline as set forth in the
28 Disciplinary Order below.

1 CONTINGENCY

2 10. This stipulation shall be subject to approval by the Board. Respondent
3 understands and agrees that the Board's staff and counsel for Complainant may communicate
4 directly with the Board regarding this stipulation and settlement, without notice to or participation
5 by Respondent. By signing the stipulation, Respondent understands and agrees that he may not
6 withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers
7 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the
8 Stipulated Settlement and Disciplinary Order shall be of no force or effect (except for this
9 paragraph), it shall be inadmissible in any legal action between the parties, and the Board shall not
10 be disqualified from further action by having considered this matter.

11 11. The parties understand and agree that facsimile copies of this Stipulated
12 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
13 force and effect as the originals.

14 12. In consideration of the foregoing admissions and stipulations, the parties
15 agree that the Board may, without further notice or formal proceeding, issue and enter the
16 following Disciplinary Order:

17 DISCIPLINARY ORDER

18 IT IS HEREBY ORDERED that Respiratory Care Practitioner License No. 22791
19 issued to Respondent Lamont Otis Ivery is revoked. However, the revocation is stayed and
20 Respondent is placed on probation for three (3) years from the effective date of this decision on
21 the following terms and conditions.

22 1. WORK SCHEDULES Respondent shall be required to submit to the
23 probation monitor work schedules on a weekly/monthly basis for the length of probation.
24 Respondent shall ensure the Board has a copy of his current work schedule at all times for each
25 place of employment.

26 Failure to submit current work schedules on a continuous basis shall constitute a
27 violation of probation, and shall result in the filing of an accusation and/or a petition to revoke
28 probation against Respondent's respiratory care practitioner license.

1 2. BIOLOGICAL FLUID TESTING Respondent, at his expense, shall
2 participate in random testing, including, but not limited to, biological fluid testing (i.e. urine,
3 blood, saliva), breathalyzer, hair follicle testing, or a drug screening program approved by the
4 Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire
5 probation period. The frequency and location of testing will be determined by the Board.

6 At all times, Respondent shall fully cooperate with the Board or any of its
7 representatives, and shall, when directed, appear for testing as requested, and submit to such tests
8 and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other
9 controlled substances.

10 If Respondent is unable to provide a specimen in a reasonable amount of time from
11 the request, while at the work site, Respondent understands that any Board representative may
12 request from the supervisor, manager or director on duty to observe Respondent in a manner that
13 does not interrupt or jeopardize patient care in any manner, until such time Respondent provides a
14 specimen acceptable to the Board.

15 Failure to submit to testing or appear as requested by any Board representative for
16 testing, as directed, shall constitute a violation of probation, and shall result in the filing of an
17 accusation and/or a petition to revoke probation against Respondent's respiratory care
18 practitioner license.

19 3. ABSTENTION FROM USE OF DRUGS AND ALCOHOL Respondent
20 shall completely abstain from the possession or use of alcohol, controlled substances, dangerous
21 drugs, and any and all other mood altering drugs, substances and their associated paraphernalia,
22 except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented
23 medical treatment.

24 Respondent shall execute a release authorizing the release of pharmacy and
25 prescribing records as well as physical and mental health records. Respondent shall also provide
26 information of treating physicians, counselors or any other treating professionals as requested by
27 the Board.

28 Respondent shall ensure that he is not in the presence of or in the same physical

1 location as individuals who are using illegal substances, even if Respondent is not personally
2 ingesting the drug(s).

3 Any positive result that registers over the established laboratory cutoff level shall
4 constitute a violation of probation and shall result in the filing of an accusation and/or a petition to
5 revoke probation against Respondent's respiratory care practitioner license.

6 Respondent also understands and agrees that any positive result that registers over
7 the established laboratory cutoff level shall be reported to each of Respondent's employers.

8 4. RESTRICTION OF PRACTICE Respondent may not be employed or
9 function as a member of a respiratory care management or supervisory staff during the entire
10 length of probation. This includes lead functions.

11 5. SUPERVISOR QUARTERLY REPORTS Supervisor Quarterly Reports
12 of Performance are due for each year of probation and the entire length of probation from each
13 employer, as follows:

14 For the period covering January 1st through March 31st, reports are to be completed and
15 submitted between April 1st and April 7th. For the period covering April 1st through June 30th,
16 reports are to be completed and submitted between July 1st and July 7th. For the period covering
17 July 1st through September 30th, reports are to be completed and submitted between October 1st
18 and October 7th. For the period covering October 1st through December 31st, reports are to be
19 completed and submitted between January 1st and January 7th. Respondent is ultimately
20 responsible for ensuring his employer(s) submits complete and timely reports. Failure to ensure
21 each employer submits complete and timely reports shall constitute a violation of probation.

22 6. OBEY ALL LAWS Respondent shall obey all laws, whether federal,
23 state, or local. Respondent shall also obey all regulations governing the practice of respiratory
24 care in California.

25 Respondent shall notify the Board in writing within 14 days of any incident
26 resulting in his arrest, or charges filed against, or a citation issued against Respondent.

27 7. QUARTERLY REPORTS Respondent shall file quarterly reports of
28 compliance under penalty of perjury, on forms to be provided to the probation monitor assigned

1 by the Board. Omission or falsification in any manner of any information on these reports shall
2 constitute a violation of probation, and shall result in the filing of an accusation and/or a petition
3 to revoke probation against Respondent's respiratory care practitioner license.

4 Quarterly report forms will be provided by the Board. Respondent is responsible
5 for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each
6 year of probation and the entire length of probation as follows:

7 For the period covering January 1st through March 31st, reports are to be
8 completed and submitted between April 1st and April 7th. For the period covering April 1st
9 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For
10 the period covering July 1st through September 30th, reports are to be completed and submitted
11 between October 1st and October 7th. For the period covering October 1st through December 31st,
12 reports are to be completed and submitted between January 1st and January 7th.

13 Failure to submit complete and timely reports shall constitute a violation of
14 probation.

15 8. PROBATION MONITORING PROGRAM Respondent shall comply
16 with requirements of the Board appointed probation monitoring program, and shall, upon
17 reasonable request, report to or appear to a local venue as directed.

18 Respondent shall claim all certified mail issued by the Board, respond to all notices
19 of reasonable requests timely, and submit Annual Reports, Identification Update reports or other
20 reports similar in nature, as requested and directed by the Board or its representative.

21 Respondent is encouraged to contact the Board's Probation Program at any time
22 he has a question or concern regarding his terms and conditions of probation.

23 Failure to appear for any scheduled meeting or examination, or cooperate with the
24 requirements of the program, including timely submission of requested information, shall
25 constitute a violation of probation, and will result in the filing of an accusation and/or a petition to
26 revoke probation against Respondent's respiratory care practitioner license.

27 9. PROBATION MONITORING COSTS All costs incurred for probation
28 monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be

1 adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and
2 conditions may also cause this amount to be increased.

3 All payments for costs are to be sent directly to the Respiratory Care Board and
4 must be received by the date(s) specified. (Periods of tolling will not toll the probation
5 monitoring costs incurred.)

6 If Respondent is unable to submit costs for any month, he shall be required instead
7 to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to
8 submit the costs including payment amount(s). Supporting documentation and evidence of why
9 the Respondent is unable to make such payment(s) must accompany this submission.

10 Respondent understands that failure to submit costs timely is a violation of
11 probation, and submission of evidence demonstrating financial hardship does not preclude the
12 Board from pursuing further disciplinary action. However, Respondent understands providing
13 evidence and supporting documentation of financial hardship may delay further disciplinary action.

14 In addition to any other disciplinary action taken by the Board, an unrestricted
15 license will not be issued at the end of the probationary period and the respiratory care
16 practitioner license will not be renewed, until such time all probation monitoring costs have been
17 paid.

18 The filing of bankruptcy by Respondent shall not relieve the Respondent of his
19 responsibility to reimburse the Board for costs incurred.

20 10. EMPLOYMENT REQUIREMENT Respondent shall be employed a
21 minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his
22 probation period.

23 Respondent may substitute successful completion of a minimum of thirty (30)
24 additional continuing education hours, beyond that which is required for license renewal, for each
25 8 months of employment required. Respondent shall submit proof to the Board of successful
26 completion of all continuing education requirements. Respondent is responsible for paying all
27 costs associated with fulfilling this term and condition of probation.

28 11. NOTICE TO EMPLOYER Respondent shall be required to inform his

1 employer, and each subsequent employer during the probation period, of the discipline imposed
2 by this decision by providing his supervisor and director and all subsequent supervisors and
3 directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in
4 this matter prior to the beginning of or returning to employment or within 14 days from each
5 change in a supervisor or director.

6 If Respondent is employed by or through a registry [and is not restricted from
7 working for a registry], Respondent shall make each hospital or establishment to which he is sent
8 aware of the discipline imposed by this decision by providing his direct supervisor and
9 administrator at each hospital or establishment with a copy of this decision, and the Statement(s)
10 of Issues in this matter prior to the beginning of employment. This must be done each time there
11 is a change in supervisors or administrators.

12 The employer will then inform the Board, in writing, that he is aware of the
13 discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting
14 the Board to obtain additional forms, if needed. All reports completed by the employer must be
15 submitted from the employer directly to the Board.

16 Respondent shall execute a release authorizing the Board or any of its
17 representatives to review and obtain copies of all employment records and discuss and inquire of
18 the probationary status with any of Respondent's supervisors or directors.

19 12. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall
20 notify the Board, and appointed probation monitor, in writing, of any and all changes of
21 employment, location, and address within 14 days of such change. This includes, but is not
22 limited to, applying for employment, termination or resignation from employment, change in
23 employment status, change in supervisors, administrators or directors.

24 Respondent shall also notify his probation monitor AND the Board IN WRITING
25 of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for
26 mailing purposes, however the Respondent must also provide his physical residence address as
27 well.

28 13. COST RECOVERY Respondent shall pay to the Board a sum not to

1 exceed the costs of the investigation and prosecution of this case. That sum shall be \$1,907.50
2 which includes past due probation monitoring costs of \$588.00 for the months of January through
3 June 2005, and the current cost recovery of \$1,319.50, and shall be paid in full directly to the
4 Board, in equal quarterly payments, within 12 months from the effective date of this decision.
5 Cost recovery will not be tolled.

6 If Respondent is unable to submit costs timely, he shall be required instead to
7 submit an explanation of why he is unable to submit these costs in part or in entirety, and the
8 date(s) he will be able to submit the costs including payment amount(s). Supporting
9 documentation and evidence of why the Respondent is unable to make such payment(s) must
10 accompany this submission.

11 Respondent understands that failure to submit costs timely is a violation of
12 probation, and submission of evidence demonstrating financial hardship does not preclude the
13 Board from pursuing further disciplinary action. However, Respondent understands that
14 providing evidence and supporting documentation of financial hardship may delay further
15 disciplinary action.

16 Consideration to financial hardship will not be given should Respondent violate
17 this term and condition, unless an unexpected AND unavoidable hardship is established from the
18 date of this order to the date payment(s) is due.

19 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his
20 responsibility to reimburse the Board for these costs.

21 14. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE

22 Periods of residency or practice outside California, whether the periods of residency or practice
23 are temporary or permanent, will toll the probation period, but will not toll the cost recovery
24 requirement, nor the probation monitoring costs incurred. Travel out of California for more than
25 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the
26 Board, in writing, within 14 days, upon his return to California and prior to the commencement of
27 any employment where representation as a respiratory care practitioner is/was provided.

28 15. VALID LICENSE STATUS Respondent shall maintain a current, active

1 and valid license for the length of the probation period. Failure to pay all fees and meet
2 Continuing Education requirements prior to his license expiration date shall constitute a violation
3 of probation.

4 16. VIOLATION OF PROBATION If Respondent violates any term of the
5 probation in any respect, the Board, after giving Respondent notice and the opportunity to be
6 heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to
7 revoke probation is filed against Respondent during probation, the Board shall have continuing
8 jurisdiction and the period of probation shall be extended until the matter is final. No petition for
9 modification of penalty shall be considered while there is an accusation or petition to revoke
10 probation or other penalty pending against Respondent.

11 17. COMPLETION OF PROBATION Upon successful completion of
12 probation, Respondent's license shall be fully restored.

13
14 ACCEPTANCE

15 I have carefully read the above Stipulated Settlement and Disciplinary Order, and
16 I fully understand the terms and conditions and other matters contained therein. I understand the
17 effect this stipulation will have on my Respiratory Care Practitioner License. I enter into this
18 Stipulated Settlement voluntarily, knowingly and intelligently and agree to be bound by the
19 Disciplinary Order and Decision of the Respiratory Care Board.

20 DATED:

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23 Original signed by:
24 LAMONT OTIS IVERY
25 Respondent
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.

DATED: November 17, 2005.

BILL LOCKYER, Attorney General
of the State of California

Original signed by Vladimir Shalkevich for:
ELAINE GYURKO
Senior Legal Analyst

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to
Revoke Probation Against:

LAMONT OTIS IVERY
7646 Sandpiper Court
Rancho Cucamonga, California 91730

Case No. R-1974

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on February 27, 2006.

It is so ORDERED February 16, 2006.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

Exhibit 1

Accusation and Petition to Revoke Probation No. R-1974